

ESTTA Tracking number: **ESTTA638521**

Filing date: **11/12/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Reliant Technologies, LLC
Granted to Date of previous extension	11/12/2014
Address	25881 Industrial Boulevard Hayward, CA 94545 UNITED STATES
Attorney information	Kathryn E. Smith Wood Herron & Evans LLP 441 Vine Street 2700 Carew Tower Cincinnati, OH 45202 UNITED STATES ksmith@whe-law.com Phone:(513) 241-2324

Applicant Information

Application No	86212264	Publication date	07/15/2014
Opposition Filing Date	11/12/2014	Opposition Period Ends	11/12/2014
Applicant	FRACTOGRAM, LLC Suite 250 Maple Lawn, MD 20759 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0


All goods and services in the class are opposed, namely: computer software to enable uploading, downloading, accessing, posting, displaying, editing, tagging, blogging, streaming, linking, sharing or otherwise providing electronic media or information via computer and communication networks; software for sending and receiving electronic messages, graphics, images, audio and audio visual content via global communication networks; computer software for the collection, editing, organizing, modifying, transmission, storage and sharing of data and information; computer software for accessing, browsing and searching online databases; computer software for personal information management, and data synchronization software


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration	2974491	Application Date	02/08/2004
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No.			
Registration Date	07/19/2005	Foreign Priority Date	NONE
Word Mark	FRAXEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2004/09/30 First Use In Commerce: 2004/09/30 Medical Lasers		

U.S. Registration No.	3259488	Application Date	12/15/2005
Registration Date	07/03/2007	Foreign Priority Date	NONE
Word Mark	FRAXEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2005/12/29 First Use In Commerce: 2005/12/29 Cosmetic and plastic surgery and dermatological treatment services		

U.S. Registration No.	3518039	Application Date	10/20/2006
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Registration Date	10/14/2008	Foreign Priority Date	NONE
Word Mark	FRAXEL		
Design Mark			
Description of Mark	The mark consists of the word "Fraxel" to the right of which is a design of dots of various sizes arranged in a semi-circle.		
Goods/Services	Class 010. First use: First Use: 2007/07/31 First Use In Commerce: 2007/07/31 Lasers for medical use Class 044. First use: First Use: 2008/04/07 First Use In Commerce: 2008/04/07 plastic surgery and dermatological treatment services		

U.S. Registration No.	3450499	Application Date	04/05/2007
Registration Date	06/17/2008	Foreign Priority Date	NONE
Word Mark	FRAXEL REPAIR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2007/12/14 First Use In Commerce: 2007/12/14 Lasers for the medical and cosmetic treatment of the face and skin Class 044. First use: First Use: 2007/12/14 First Use In Commerce: 2007/12/14 Cosmetic and plastic surgery and dermatological treatment services		

U.S. Registration No.	3561791	Application Date	04/05/2007
Registration Date	01/13/2009	Foreign Priority Date	NONE
Word Mark	FRAXEL RE:STORE		

Design Mark	FRAXEL RE:STORE
Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 2007/12/07 First Use In Commerce: 2007/12/07 Lasers for the medical and cosmetic treatment of the face and skin Class 044. First use: First Use: 2007/12/07 First Use In Commerce: 2007/12/07 Cosmetic and plastic surgery and dermatological treatment services

U.S. Registration No.	3502403	Application Date	04/05/2007
Registration Date	09/16/2008	Foreign Priority Date	NONE
Word Mark	FRAXEL RE:FINE		
Design Mark	FRAXEL RE:FINE		
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2007/07/31 First Use In Commerce: 2007/07/31 Lasers for the medical and cosmetic treatment of the face and skin Class 044. First use: First Use: 2007/07/31 First Use In Commerce: 2007/07/31 Cosmetic and plastic surgery and dermatological treatment services		

U.S. Application No.	85232905	Application Date	02/03/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FRAXEL		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0 Skin creams in liquid and in solid form; beauty gels; skin masks; non-medicated skin serums; skin cleansers; skin moisturizers; sun screens; skin whitening preparations</p> <p>Class 005. First use: First Use: 0 First Use In Commerce: 0 Dressings for wounds; medicated skin care preparations</p>

Attachments	78364508#TMSN.png(bytes) 78774531#TMSN.png(bytes) 77975811#TMSN.png(bytes) 77150163#TMSN.png(bytes) 77150160#TMSN.png(bytes) 77150156#TMSN.png(bytes) 85232905#TMSN.png(bytes) Notice of Opposition.pdf(640930 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kathryn E. Smith/
Name	Kathryn E. Smith
Date	11/12/2014

July 15, 2014

-1-

The subject application (“Application”) was filed on March 5, 2014 under Section 1(b) of the Trademark Act, and published in the Official Gazette of July 15, 2014. Opposer obtained an extension of time to file an opposition to the Application, up to and including November 12, 2014. Thus, this Notice of Opposition is timely filed.

As grounds for the opposition, it is alleged that:

1. Reliant is the owner of several U.S. trademark registrations and prior filed applications of marks that comprise or include the term **FRAXEL**, covering a variety of goods and services, namely:

- **FRAXEL** – Registration No. 2,974,491 issued on July 19, 2005 in Class 10 for “Medical lasers”;
- **FRAXEL** – Registration No. 3,259,488 issued on July 3, 2007 in Class 44 for “Cosmetic and plastic surgery and dermatological treatment services”;
- **FRAXEL** (and Design) – Registration No. 3,518,039 issued on October 14, 2008 in Classes 10 and 44 for “Lasers for medical use,” in Class 10; and “Plastic surgery and dermatological treatment services,” in Class 44;
- **FRAXEL RE:PAIR** – Registration No. 3,450,499 issued on June 17, 2008 in Classes 10 and 44 for “Lasers for the medical and cosmetic treatment of the face and skin,” in Class 10; and “Cosmetic and plastic surgery and dermatological treatment services”, in Class 44;
- **FRAXEL RE:STORE** – Registration No. 3,561,791 issued on January 13, 2009 in Classes 10 and 44 for “Lasers for the medical and cosmetic treatment of the face and skin,” in Class 10; and “Cosmetic and plastic surgery and dermatological treatment services”, in Class 44;
- **FRAXEL RE:FINE** – Registration No. 3,502,403 issued on September 16, 2008 in Classes 10 and 44 for “Lasers for the medical and cosmetic treatment of the face and skin,” in Class 10; and “Cosmetic and plastic surgery and dermatological treatment services,” in Class 44; and
- **FRAXEL** – Application No. 85/232,905 filed on February 3, 2011 in Classes 3 and 5 for the following goods: “Skin creams in liquid and in solid form; beauty gels; skin masks; non-medicated skin serums; skin cleansers; skin moisturizers; sun screens; skin whitening preparations,” in Class 3; and “Dressings for wounds; medicated skin care preparations,” in Class 5.

The above-listed registrations are presently valid and in good standing. Copies of the Trademark Office records corresponding to each of the above-listed registrations and application are attached hereto as **Exhibit A**. These marks are collectively referred to hereinafter as the “FRAXEL Marks.”

2. Reliant has registered the FRAXEL mark in countries around the world and operates an extensive global network of authorized doctors, treatment specialists, clinicians, and distributors through which FRAXEL-branded goods and services are offered via authorized and licensed doctors and treatment clinics in countries around the globe. Reliant provides information about the products and services it offers under the FRAXEL mark at its website, www.Fraxel.com.

3. Reliant has continuously used one or more of the FRAXEL Marks in U.S. commerce in connection with the above-described goods and/or services on a continuous and exclusive basis since at least as early as 2004, the date of first use in commerce recited in the ‘491 Registration for FRAXEL. Reliant has made continuous and uninterrupted use of the mark in U.S. commerce since that time and continues to date.

4. Reliant’s FRAXEL treatment products and devices are also well-recognized and well-respected in the U.S. and beyond as a highly effective skin treatment.

5. Since the technology was introduced in 2004, Reliant has treated more than 800,000 patients with its proprietary FRAXEL technology. FRAXEL treatments are well-known and widely-sought because of the success patients have with the technology.

6. Reliant has expended substantial amounts of time, money and effort over the years in advertising, promoting and popularizing the FRAXEL Marks and in developing and preserving the good will associated therewith.

7. The public has come to know the FRAXEL Marks and recognize that any goods or services so marked originate with Reliant. The FRAXEL Marks have been so extensively used and advertised throughout the United States that these marks are associated exclusively with Reliant as a well-known provider of its goods and services.

8. From a time long prior to the filing of the Application at issue, Reliant has used the FRAXEL Marks in connection with the above-listed goods and services, for which the FRAXEL Marks have become famous within the meaning of the Lanham Act. Moreover, by virtue of the excellence and effectiveness of the treatment products and services offered to the public under the FRAXEL Marks, the mark has a valuable reputation.

9. Notwithstanding Opposer's long prior rights in and to the FRAXEL Marks, on information and belief, on March 5, 2014 Applicant Fractograf, LLC ("Applicant") filed an application for registration of the mark FRAXEL for goods described in U.S. Trademark Application Serial No. 86/212,264 as:

Computer software to enable uploading, downloading, accessing, posting, displaying, editing, tagging, blogging, streaming, linking, sharing or otherwise providing electronic media or information via computer and communication networks; software for sending and receiving electronic messages, graphics, images, audio and audio visual content via global communication networks; computer software for the collection, editing, organizing, modifying, transmission, storage and sharing of data and information; computer software for accessing, browsing and searching online databases; computer software for personal information management, and data synchronization software, in International Class 9.

10. Upon information and belief, Applicant is a limited liability company organized under the laws of the State of Maryland, with an address of Suite 250, 8171 Maple Lawn Boulevard, Maple Lawn, Maryland 20759.

11. Applicant filed Application Serial No. 86/212,264 under Section 1(b) of the Trademark Act.

12. Applicant is not entitled to use or register as a trademark the mark FRAXEL for which it seeks registration in its Application Serial No. 86/212,264, either on March 5, 2014, the date of filing of said application, or on July 15, 2014, the date of publication thereof in the Official Gazette.

13. Applicant's FRAXEL mark is identical and confusingly similar to Opposer's FRAXEL Marks in appearance, sound, meaning, connotation, and commercial impression, and is used in connection with goods that are closely related to goods and services offered by Reliant.

14. Applicant knew or should have known of Opposer's FRAXEL Marks when it adopted the mark FRAXEL.

15. Applicant's adoption and use of the mark FRAXEL is without the license or permission of Opposer.

16. The mark Applicant seeks to register, namely, FRAXEL, so resembles Opposer's FRAXEL Marks as to be likely, when applied to the goods of Applicant, to cause confusion or mistake or to deceive persons by creating the erroneous impression that Applicant's goods originate with or come from Opposer, or are authorized, licensed, endorsed, sponsored by, or are connected in some way with Opposer, and therefore, the registration thereof by Applicant would be injurious to Opposer.

17. Registration of the FRAXEL mark by Applicant is barred by the provisions of 15 U.S.C. §1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's FRAXEL Marks previously registered in the United States Patent and Trademark Office, previously used by Opposer and not abandoned, as to be likely, when used in connection with the goods of Applicant, to cause confusion, mistake or to deceive. For the above reasons, any use of the mark FRAXEL by Applicant is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that the goods offered under the mark FRAXEL emanate from or are otherwise sponsored or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

18. Applicant's use of the FRAXEL mark is likely to cause dilution of the distinctiveness and good will associated with Opposer's FRAXEL Marks and therefore should be denied registration pursuant to 15 U.S.C. §1125(c).

19. Opposer will be damaged by registration of the FRAXEL mark to Applicant because registration of the mark will give Applicant *prima facie* evidence of its ownership of, and its exclusive nationwide right to use, a mark that is likely to impair the distinctiveness of Opposer's FRAXEL mark.

20. By reason of the foregoing, Opposer prays Application Serial No. 86/212,264 be rejected; and prays for judgment sustaining this opposition in Opposer's favor and refusing registration to Applicant of the mark shown in the subject Application.

* * * * *

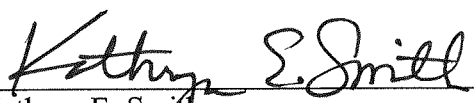
The opposition fee in the amount of \$300.00 is filed herewith. The Commissioner is authorized to charge any underpayment to Deposit Account No. 23-3000 in case of any deficiency.

Opposer requests such other and further relief as the Board may deem just and proper.

Respectfully submitted,

WOOD HERRON & EVANS LLP

Date: Nov. 12, 2014


Kathryn E. Smith
Attorney for Opposer, Reliant Technologies, LLC
Email: ksmith@whe-law.com

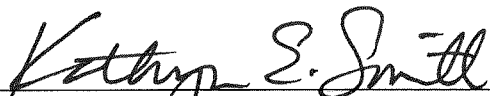
Wood Herron & Evans LLP
2700 Carew Tower, 441 Vine Street
Cincinnati, OH 45202
Voice: (513) 241-2324
Facsimile: (513) 241-6234

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition has been served upon the following by regular U.S. mail this 12th day of November, 2014:

Fractograf, LLC
Suite 250
8171 Maple Lawn Boulevard
Maple Lawn, Maryland 20759

Jonathan R. Wachs, Esq.
Offit Kurman, P.A.
8171 Maple Lawn Boulevard, Suite 200
Fulton, Maryland 20759-2521



Kathryn E. Smith
Attorney for Opposer, Reliant Technologies, LLC
Email: ksmith@whe-law.com

Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

Reg. No. 2,974,491

United States Patent and Trademark Office

Registered July 19, 2005

**TRADEMARK
PRINCIPAL REGISTER**

FRAXEL

RELIANT TECHNOLOGIES, INC. (DELAWARE
CORPORATION)
260 SHERIDAN AVE
PALO ALTO, CA 94306

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: MEDICAL LASERS. IN CLASS 10 (U.S. CLS.
26, 39 AND 44).

SN 78-364,508, FILED 2-8-2004.

FIRST USE 9-30-2004; IN COMMERCE 9-30-2004.

CHERYL CLAYTON, EXAMINING ATTORNEY

Int. Cl.: 44

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,259,488

Registered July 3, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

Fraxel

RELIANT TECHNOLOGIES, INC. (DELAWARE
CORPORATION)
464 ELLIS STREET
MOUNTAIN VIEW, CA 94043

FOR: COSMETIC AND PLASTIC SURGERY AND
DERMATOLOGICAL TREATMENT SERVICES, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 12-29-2005; IN COMMERCE 12-29-2005.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,974,491.

SN 78-774,531, FILED 12-15-2005.

JASON ROTH, EXAMINING ATTORNEY

Int. Cls.: 10 and 44

Prior U.S. Cls.: 26, 39, 44, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,518,039

Registered Oct. 14, 2008

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



RELIANT TECHNOLOGIES, INC. (DELAWARE
CORPORATION)
464 ELLIS STREET
MOUNTAIN VIEW, CA 94043

OWNER OF U.S. REG. NOS. 2,974,491 AND
3,259,488.

FOR: LASERS FOR MEDICAL USE, IN CLASS 10
(U.S. CLS. 26, 39 AND 44).

THE MARK CONSISTS OF THE WORD "FRAX-
EL" TO THE RIGHT OF WHICH IS A DESIGN OF
DOTS OF VARIOUS SIZES ARRANGED IN A SEMI-
CIRCLE.

FIRST USE 7-31-2007; IN COMMERCE 7-31-2007.

FOR: PLASTIC SURGERY AND DERMATOLO-
GICAL TREATMENT SERVICES, IN CLASS 44 (U.S.
CLS. 100 AND 101).

SN 77-975,811, FILED 10-20-2006.

FIRST USE 4-7-2008; IN COMMERCE 4-7-2008.

LYDIA BELZER, EXAMINING ATTORNEY

Int. Cls.: 10 and 44

Prior U.S. Cls.: 26, 39, 44, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,450,499

Registered June 17, 2008

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

FRAXEL RE:PAIR

RELIANT TECHNOLOGIES, INC. (DELAWARE
CORPORATION)
464 ELLIS STREET
MOUNTAIN VIEW, CA 94043

FOR: LASERS FOR THE MEDICAL AND COS-
METIC TREATMENT OF THE FACE AND SKIN, IN
CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 12-14-2007; IN COMMERCE 12-14-2007.

FOR: COSMETIC AND PLASTIC SURGERY AND
DERMATOLOGICAL TREATMENT SERVICES, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 12-14-2007; IN COMMERCE 12-14-2007.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,974,491.

SN 77-150.163, FILED 4-5-2007.

DARRYL SPRUILL, EXAMINING ATTORNEY

Int. Cls.: 10 and 44

Prior U.S. Cls.: 26, 39, 44, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,561,791

Registered Jan. 13, 2009

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

FRAXEL RE:STORE

RELIANT TECHNOLOGIES, INC. (DELAWARE
CORPORATION)
464 ELLIS STREET
MOUNTAIN VIEW, CA 94043

FOR: LASERS FOR THE MEDICAL AND COS-
METIC TREATMENT OF THE FACE AND SKIN, IN
CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 12-7-2007; IN COMMERCE 12-7-2007.

FOR: COSMETIC AND PLASTIC SURGERY AND
DERMATOLOGICAL TREATMENT SERVICES, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 12-7-2007; IN COMMERCE 12-7-2007.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,974,491.

SN 77-150.160, FILED 4-5-2007.

DARRYL SPRUILL, EXAMINING ATTORNEY

Int. Cls.: 10 and 44

Prior U.S. Cls.: 26, 39, 44, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,502,403

Registered Sep. 16, 2008

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

FRAXEL RE:FINE

RELIANT TECHNOLOGIES, INC. (DELAWARE
CORPORATION)
464 ELLIS STREET
MOUNTAIN VIEW, CA 94043

FOR: LASERS FOR THE MEDICAL AND COS-
METIC TREATMENT OF THE FACE AND SKIN, IN
CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 7-31-2007; IN COMMERCE 7-31-2007.

FOR: COSMETIC AND PLASTIC SURGERY AND
DERMATOLOGICAL TREATMENT SERVICES, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 7-31-2007; IN COMMERCE 7-31-2007.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,974,491.

SN 77-150.156, FILED 4-5-2007.

DARRYL SPRUILL, EXAMINING ATTORNEY

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FRAXEL

**Word Mark
Goods and
Services****FRAXEL**

IC 003. US 001 004 006 050 051 052. G & S: Skin creams in liquid and in solid form; beauty gels; skin masks; non-medicated skin serums; skin cleansers; skin moisturizers; sun screens; skin whitening preparations

IC 005. US 006 018 044 046 051 052. G & S: Dressings for wounds; medicated skin care preparations

**Standard
Characters
Claimed****Mark Drawing
Code**

(4) STANDARD CHARACTER MARK

Serial Number

85232905

Filing Date

February 3, 2011

Current Basis

1B

**Original Filing
Basis**

1B

**Published for
Opposition**

June 7, 2011

Owner

(APPLICANT) Reliant Technologies, LLC CORPORATION DELAWARE 25881 Industrial Boulevard Hayward CALIFORNIA 94545

**Assignment
Recorded**

ASSIGNMENT RECORDED

Attorney of Record Kathryn E. Smith

Prior Registrations 2974491;3259488;3518039;AND OTHERS**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead
Indicator** LIVE

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